

FILED

OCT 18 2002

BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

**SECRETARY, BOARD OF
OIL, GAS & MINING**

ooOoo

J.

IN THE MATTER OF THE PETITION	:	NOTICE OF AGENCY ACTION
OF THE DIVISION OF OIL,	:	DOCKET NO. 2002-
GAS AND MINING, FOR AN ORDER	:	FILE NO. M/043/004
TERMINATING THE SELF BONDING	:	
AND INDEMNITY AGREEMENT AND	:	
REQUIRING UTELITE CORPORATION TO	:	
POST AN ADEQUATE REPLACEMENT	:	
RECLAMATION SURETY OR SUSPEND	:	
MINING OPERATIONS; UTELITE MINE,	:	
UTELITE CORPORATION, SUMMIT	:	
COUNTY, UTAH	:	

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RELIEF SOUGHT

The Division of Oil, Gas and Mining ("Division"), hereby petitions the Board of Oil, Gas and Mining ("Board"), for an Order setting a termination date for the Self Bonding and Indemnity Agreement within 60 days and directing Utelite Corporation, operator of the Utelite Mine, to obtain and file with the Division an acceptable replacement reclamation surety 30 days before termination, or suspend all mining related operations. The Utelite mine is located in portions of the N/2 of Section 8, and the S/2 of the SE/4, Section 5, T1S, R5E, SLBM, Summit County, Utah. The operator of record is Utelite Corporation. The company representative is Carsten Mortensen of Coalville, Utah.

JURISDICTION

1. This action is brought by the Division pursuant to its authority under Utah Code Annotated §40-8-7(1)(e) (1998) to require furnishing and maintenance of reasonable surety to guarantee the performance of the duty to reclaim the land affected by mining operations in accordance with approved plans.
2. Jurisdiction over this matter is conferred upon the Board of Oil, Gas and Mining ("Board") by Utah Code Annotated §40-8-6 (1998).
3. Withdrawal of permit approval is pursuant to Utah Code Annotated §40-8-16(2)(b) (1998). *Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter.*

NOTICE REQUIREMENTS

4. Pursuant to Sections 63-46b-6 to 63-46b-11 of Utah Code Annotated (1998), the hearing will be conducted formally.

5. The hearing will be held on December 4, 2002, at 10:00 a.m. or as soon thereafter as the matter may be heard. Any party who fails to appear at said hearing may be held in default.
6. The names and addresses of all persons to whom Notice of Agency Action shall be given are listed on the attached Certificate of Mailing and by this reference incorporated herein.

STATEMENT OF THE FACTS

1. Utelite Corporation is the operator of record of the Utelite Mine located in portions of the N/2 of Section 8, and the S/2 of the SE/4, Section 5, T1S, R5E, SLBM, Summit County, Utah.
2. Utelite Corporation entered into a Self Bonding and Indemnity Agreement (Agreement) with the Division and the Board on January 25, 1990 (approved February 26, 1990) which is attached as Exhibit 1 to this Notice of Agency Action.
3. The Agreement requires that Utelite submit to the Division certain specific financial information annually, and the Agreement further provides that "[F]ailure of [Utelite] to maintain or improve" the financial conditions of the company in accordance with criteria established by the Agreement, "will be grounds for termination of this Agreement."
4. The Division has reviewed the financial information provided and determined that Utelite has failed to maintain the financial ratios that were established by the Board of Oil, Gas and Mining as condition #7 of the Agreement.
5. By letter dated July 19, 2002, (attached as Exhibit 2), the Division notified Utelite of this Contract breach and advised the operator of the Division's intention to exercise condition #8 of the Self-bonding and Indemnity Agreement that requires the Division to file a Notice of Agency Action with the Board to resolve this matter at a public hearing.
6. By letter dated August 5, 2002, Utelite requested a meeting with the Division to discuss our findings in this regard. Utelite requested and was granted additional time to provide supplemental financial information to correct this deficiency and/or otherwise demonstrate compliance with the original contractual requirements.
7. Utelite has failed to provide sufficient information to enable the Division to make a positive finding demonstrating Utelite's compliance with the terms of the original contractual agreement.
8. Paragraph 8 of the Agreement provides that after notice and hearing the "Board may designate a termination date therefore," and the "Operator must then provide an alternate reclamation surety in the form and amount satisfactory to the Board prior to 30 days before the stated date of termination."
9. Paragraph 9 of the Agreement states that if the Operator fails to provide an alternative reclamation surety satisfactory to the Board, the Division or the Board may direct the Operator to cease all operations at the mine and to initiate and complete reclamation.

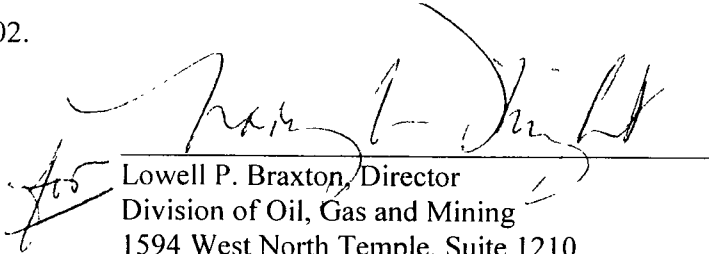
10. Utah Code Section 40-8-15(2)(b) of the Utah Mined Land Reclamation Act (the "Act"), states that the Board or Division shall not withdraw approval of a Notice of Intention unless the operator fails to provide and maintain surety as may be required under this chapter.
11. Utelite Corporation has failed to comply with the requirements as outlined in the Division's July 19, 2002, Certified Letter, and has failed to comply with the financial requirements of the Self-bonding and Indemnity Agreement.

PRAYER FOR RELIEF

WHEREFORE, the Division requests that the Board enter its Order as follows:

- a. Designate a termination date for the Self-bonding and Indemnity Agreement no less than and no more than 60 days from the date of this Order.
- b. Order Utelite Corporation to provide an alternate reclamation surety in the form and amount satisfactory to the Board no less than 30 days before the stated date of termination of the Agreement.
- c. In the event Utelite Corporation should fail or refuse to provide adequate reclamation surety 30 days prior to the termination date, the large mining notice of intention shall be revoked or suspended, and Utelite Corporation shall reclaim the Utelite Mine according to the approved mining and reclamation plan.
- d. Such further relief as is just and proper based on the evidence presented to the Board.

Dated this 18th day of October, 2002.



Lowell P. Braxton, Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801
Telephone: (801) 538-5340

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Notice of Agency Action, for Utelite Corporation, Utelite Mine, M/043/004, to be mailed by first class mail, postage prepaid, the 18th day of October, 2002 to:

CERTIFIED RETURN RECEIPT


7099 3400 0016 8895 4821

Carsten Mortensen
Utelite Corporation
P.O. Box 387
Coalville, Utah 84017

H. Michael Keller, Esq.
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145-0340

Steven Alder
Assistant Attorney General
Department of Natural Resources
Division of Oil, Gas & Mining
1594 West North Temple, Suite #300
Salt Lake City, Utah 84114

Kurt Seel
Assistant Attorney General
160 East 300 South - 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857



Joelle Burns
Minerals Engineering Technician

State of Utah
Department of Natural Resources
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84120-1203
(801) 538-5340

SELF BONDING AND INDEMNITY AGREEMENT

This Self Bonding and Indemnity Agreement ("Agreement") is entered into by and between Utelite Corporation ("Operator") and the State of Utah, Department of Natural Resources, Board and Division of Oil, Gas and Mining ("Board" and "Division", respectively). The Board, Division and the Operator find that:

WHEREAS, pursuant to the Mined Land Reclamation Act, §40-8-1 et seq., Utah Code Annotated (1953, as amended) ("Act") and applicable rules, the Operator has obtained Permit No. M/043/004 from the Division to operate the Utelite Mine ("Mine") in Summit County, Utah, which location is more specifically described in Exhibit A; and,

WHEREAS, the Board, the Division and the Operator agree that, upon permanent cessation of operations, complete reclamation of the Mine pursuant to Permit No. M/043/004, including revisions and amendments (collectively "Permit"), the Act, and applicable rules is essential to protect the land from future harm due to prolonged deterioration; and,

WHEREAS, the Operator and the Division have requested that the Board accept a written contractual agreement as the form of reclamation surety required by the Act; and,

EXHIBIT

1

WHEREAS, the Operator has designated CT Corporation System, 170 South Main St., Salt Lake City, Utah, 84111, as its agent for service of process in the State of Utah; and,

WHEREAS, the Operator has been in continuous operation as a business entity for the last twenty-five years; and,

WHEREAS, the post-mining land use for the subject property may or may not include a county land fill; and,

WHEREAS, the Operator has submitted a December 31, 1988 corporate financial statement (1988 income tax basis), and a review opinion in accordance with standards established by the American Institute of Certified Public Accountants and these financial data include assets and liabilities information which establishes the baseline financial standing of the Operator for future determinations of financial capability to perform reclamation under this Agreement.

NOW, THEREFORE, in return for the authority to mine pursuant to the Act, the applicable rules and the Permit, and in addition to other consideration, the sufficiency and receipt of which is hereby acknowledged, the Operator agrees to be held and bonds to the Board for the sum of \$101,800.00 in United States currency for the timely performance of reclamation responsibilities for the Mine as specified by the Permit, the Act, and the applicable rules. By the submission of this Agreement, the Operator will and truly binds itself, its successors and assigns, jointly and severally, by these presents.

The conditions of the above obligations are:

1. The Operator shall perform all duties and fulfill all requirements applicable to reclamation of the Mine as set forth in the Act, the applicable rules, and the terms of the Permit.

2. The liability under this Agreement is conditioned upon successful reclamation of the permit area as provided in the reclamation plan for the Permit for the period of time and in the manner specified in the Act, the applicable rules, and the terms of the Permit. The liability or responsibility of the Operator hereunder is \$101,800.00, provided that the Board may adjust the amount of liability hereunder as provided in Section 6 hereof.

3. Utelite hereby agrees to indemnify and hold the Board and Division harmless from any claim, demand, liability, costs, charge, or suit brought by a third party as a result of the Operator's failure to abide by the terms and conditions of the Reclamation Plan as set forth in the Permit and from any failure to comply with the terms of this Agreement.

4. Upon successful completion of part or all of the obligations secured hereby, the Operator may petition the Board for a final release of part or all of the obligations under this Agreement. Upon such petition, the Division shall conduct an inspection to ascertain whether duties and obligations of the Operator under the Act, the applicable rules, and the Permit have been fulfilled. If it is determined that such duties and obligations have been fulfilled, the Board shall release the Operator from part or all of its obligations under this Agreement and shall file a notice of such release in the property records of Summit County, Utah.

5. At least every five years or at the request of the Operator, this Agreement shall be reviewed by the Division and the amount of liability adjusted if the Division determines that the cost of future reclamation has materially changed.

6. If at any time the Division is satisfied that the post-mining land use of a portion of the mine will include a landfill operated by and for Summit County, the amount of the reclamation surety will be reduced to reflect the decreased reclamation cost estimate.

7. Not later than March 30 of each year, the Operator shall submit to the Division a corporate financial statement and review opinion substantially similar to the December 31, 1988, corporate financial statement initially submitted with this Agreement and attached hereto as Exhibit B. Failure to maintain or improve the ratio of total liabilities to net worth or the ratio of current assets to current liabilities, as compared to the ratios based on Exhibit B, will be grounds for termination of this Agreement. The Operator must provide an alternate reclamation surety in the form and amount satisfactory to the Board prior to 30 days before the date set for termination of this Agreement.

8. If, after notice and hearing, the Board determines that good cause appears to terminate this Agreement, the Board may designate a termination date therefor. The Operator must then provide an alternate reclamation surety in the form and amount satisfactory to the Board prior to 30 days before the stated date of termination.

10. This Agreement will be governed and interpreted according to Utah law.

Date _____

Date _____

Date _____

APPROVED AS TO FORM:

Assistant Attorney General

Attorney for Utelite



UTELITE CORPORATION

Financial Statement

December 31, 1988

Lynn M. Carlson & Co.

CERTIFIED PUBLIC ACCOUNTANTS

175 SOUTH WEST TEMPLE
SUITE 610
SALT LAKE CITY, UTAH 84101
TELEPHONE (801) 531-1317

Lynn M. Carlson & Co.

CERTIFIED PUBLIC ACCOUNTANTS

175 SOUTH WEST TEMPLE
SUITE 610
SALT LAKE CITY, UTAH 84101
TELEPHONE (801) 531-1317
FAX (801) 521-9041
TELEX 373-0911 MUL

RECEIVED
AUG 18 1989

DIVISION OF
OIL, GAS & MINING

To the Board of Directors
Utelite Corporation
Coalville, Utah 84017

We have reviewed the accompanying statement of assets and liabilities--income tax basis of Utelite Corporation (an S corporation) as of December 31, 1988, and the related statements of revenues and expenses--income tax basis, and retained earnings--income tax basis for the year then ended, in accordance with standards established by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the owners of Utelite Corporation.

The financial statements have been prepared on the accounting basis used by the Company for federal income tax purposes, which is a comprehensive basis of accounting other than generally accepted accounting principles.

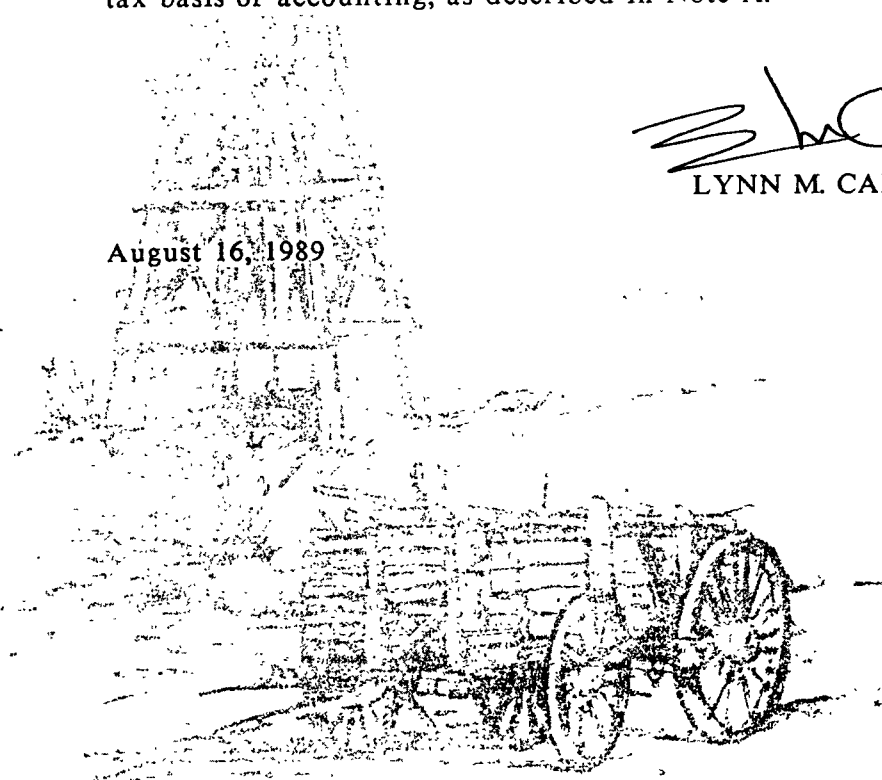
A review consists principally of inquiries of Company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with the income tax basis of accounting, as described in Note A.



LYNN M. CARLSON & CO.

August 16, 1989



UTELITE CORPORATION
STATEMENT OF ASSETS, LIABILITIES & EQUITY—INCOME TAX BASIS
December 31, 1988

ASSETS

CURRENT ASSETS

Cash	\$ 278,293.05
Trade Accounts Receivable	306,792.25
Accounts Receivable-Western Clay Co.	9,660.54
Employee Accounts Receivable	229.93
Material in Process	124,332.51
Notes Receivable--Current	<u>31,123.12</u>

TOTAL CURRENT ASSETS 750,431.40

PROPERTY AND EQUIPMENT

Land	84,788.48
Buildings	168,503.19
Plant Machinery & Equipment	1,845,927.27
Pollution Control Equipment	178,357.12
Machinery	520,389.86
Autos, Trucks, Trailers	66,953.75
Office Equipment	34,863.04
Less Accumulated Depreciation	<u>(2,296,574.75)</u>
	603,207.96

OTHER ASSETS

Notes Receivable	49,119.79
Other	<u>13.59</u>
	<u>49,133.38</u>

\$1,402,772.74
=====

See accompanying notes and accountant's report.

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES

Current Portion of Long-Term Debt	\$ 75,000.00
Accounts Payable	1,351.52
Accrued Payroll Taxes Payable	1,377.22
Accrued Interest Payable	<u>335.35</u>

TOTAL CURRENT LIABILITIES 78,064.09

LONG-TERM DEBT, Net of Current Portion
Notes Payable

5,000.00

5,000.00

DEFERRED GAIN ON INVOLUNTARY CONVERSION

288,962.30

STOCKHOLDERS' EQUITY

Common Stock, Par Value \$1.00	164,758.00
500,000 Shares Authorized	
164,758 Shares Issued of which	
55,443 are Held in Treasury	
Premium on Capital Stock	56,366.70
Treasury Stock	(55,443.00)
Retained Earnings	<u>865,064.65</u>

1,030,746.35

\$1,402,772.74

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See accompanying notes and accountant's report.

UTELITE CORPORA. JN
STATEMENT OF REVENUE AND EXPENSES—INCOME TAX BASIS
December 31, 1988

SALES	\$2,370,006.98
COST OF SALES	
Inventory Adjustment	326,829.69
Purchases	2,968.08
Direct Labor	393,699.66
Plant Power & Utilities	79,672.80
Kiln Fuel	178,926.81
Delivery Expense	595,364.09
Supplies	15,972.40
Repairs & Maintenance	143,342.09
Fuel & Oil	26,261.40
Raw Material Royalties	15,562.29
Lab & Testing	3,601.65
MSHA	327.00
	<u>1,782,527.96</u>
GROSS PROFIT	587,479.02
EXPENSES	
Marketing & Promotion	97,308.27
Employee Benefits	57,342.31
Payroll Taxes	36,621.19
Travel & Sales	7,160.95
Insurance	8,637.22
Telephone	7,235.23
Legal & Professional	10,927.60
Office Supplies & Postage	9,805.29
Taxes & Licenses	20,188.41
Miscellaneous	795.77
Bad Debts	1,055.25
Dues, Subscriptions	930.75
Training	446.00
Depreciation	223,430.58
Management & Accounting	4,631.22
Air Pollution Control	6,800.00
ESCSI	7,690.27
Depletion	18,119.60
	<u>519,125.91</u>
INCOME FROM OPERATIONS	68,353.11
OTHER INCOME (EXPENSE)	
Interest Income	18,808.39
Gain (Loss) on Sale of Assets	(5,591.61)
Interest Expense	(15,551.48)
	<u>(2,334.70)</u>
NET INCOME	\$ 66,018.41
	=====

See accompanying notes and accountant's report.

UTELITE CORPORATION
STATEMENT OF RETAINED EARNINGS—INCOME TAX BASIS
December 31, 1988

ACCUMULATED ADJUSTMENTS ACCOUNT

Balance, January 1, 1988	\$ 388,038.97
Taxable Income	66,018.41
Dividends	(88,501.80)
Transfer to Other Retained Earnings of Amount Attributable to Stock Sold	(<u>741.47</u>)
Balance, December 31, 1988	364,814.11

PREVIOUSLY TAXED INCOME

Balance, January 1, 1988	105,544.38
Dividends in Excess of the Accumulated Adjustments Account	
Transfer to Other Retained Earnings of Amount Attributable to Stock Sold	(<u>83,136.26</u>)
Balance, December 31, 1988	22,408.12

OTHER RETAINED EARNINGS

Balance, January 1, 1988	375,845.09
Previously Taxed Income Transferred on Sale of Stock by Shareholder	83,877.73
Allowance for % Depletion	<u>18,119.60</u>
Balance, December 31, 1988	<u>477,842.42</u>

TOTAL RETAINED EARNINGS, DECEMBER 31, 1988	\$ 865,064.65 =====
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See accompanying notes and accountant's report.

UTELITE CORPORATION**STATEMENT OF CASH FLOWS—INCOME TAX BASIS**

For the Twelve Months Ended December 31, 1988

CASH FLOWS FROM OPERATING ACTIVITIES

Net Income	\$ 66,018.41
Adjustments to Reconcile Net Income to	
Net Cash Provided by Operating Activities:	
Depreciation	223,430.58
Depletion	18,119.60
Gain on Sale of Asset	(2,600.00)
Changes in Assets and Liabilities:	
Increase in Accounts Receivable	(112,646.78)
Decrease in Inventory	332,349.44
Decrease in Accounts Payable & Accrued Expenses	(38,244.28)
Decrease in Interest Payable	(167.66)

NET CASH PROVIDED BY OPERATING ACTIVITIES 486,259.31**CASH FLOWS FROM INVESTING ACTIVITIES**

Principal Received on Sunbeam Coal Purchase Contract	3,328.34
Principal Received on Loan to Outreach	5,976.93
Payments Received on Shareholder Loans	5,000.00
Loan to Related Corporation	(37,720.10)
Advances to Employees	(229.93)
Land Purchases	(18,581.73)
Capital Expenditures	(116,309.52)
Proceeds from Sale of Assets	10,000.00
Deposit Returned	245.42

NET CASH PROVIDED BY INVESTING ACTIVITIES (148,290.59)**CASH FLOWS FROM FINANCING ACTIVITIES**

Proceeds from Bank Loans	95,000.00
Payments Made on Bank Loans	(75,000.00)
Principal Payment on Land Purchase Contract	(5,000.00)
Payments Made on Shareholders' Loans	(162,049.81)
Dividends Paid	(88,501.80)

NET CASH PROVIDED BY FINANCING ACTIVITIES (235,551.61)**NET INCREASE IN CASH AND CASH EQUIVALENTS** 102,417.11**CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** 175,875.94**CASH AND CASH EQUIVALENTS AT END OF PERIOD** \$ 278,293.05
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See accompanying notes and accountant's report.

NOTES TO THE FINANCIAL STATEMENTS

NOTE A—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Income Tax Basis of Accounting

The Company's policy is to prepare its financial statements on the income tax basis of accounting; consequently, the Company recognizes depletion expense as the greater of cost depletion or statutory depletion. Under generally accepted accounting principles, only cost depletion is acceptable.

The financial statements also include a deferred gain on involuntary conversion as a result of a condemnation of land in May, 1986. The Internal Revenue Code allows the Company three years after the close of the first tax year in which the gain is realized to replace the property. Under generally accepted accounting principles, that gain would have been recognized in 1986.

Income Taxes

The Company has elected to be taxed under the provisions of Subchapter S of the Internal Revenue Code. Under those provisions, the Company does not pay federal or state corporate income taxes on its taxable income. Instead, the stockholders are liable for individual federal and state income taxes on their respective shares of the Company's taxable income.

Allowance for Doubtful Accounts

No reserve for bad debts has been established by the Company. Historically, uncollectible accounts receivable have not been significant enough to warrant establishing a reserve. Bad debts are written off as it becomes evident that they are uncollectible; any recoveries are included in income when received.

Inventories

Inventories are valued at the lower of cost or market under the first-in, first-out (FIFO) method. Cost is determined using the Internal Revenue Code's guidelines with respect to uniform capitalization of inventory.

Depreciation

Property, plant and equipment is carried at cost. Depreciation is provided over the estimated useful lives of the related assets using the accelerated cost recovery system and the modified accelerated cost recovery system required by the Internal Revenue Code.

NOTE B—NOTES PAYABLE

The company has a long-term note payable outstanding in the amount of \$5,000.00 as a result of a land purchase contract. The note requires a principal payment of \$5,000 plus accrued interest on the unpaid principal balance at the rate of eight percent (8%) payable annually. The note will mature July 31, 1990.

NOTE C—RELATED PARTY TRANSACTIONS

Ute-Systems Inc. is a C corporation owned by the same shareholders as the Company in the same ratio of stock ownership. The Company has a note receivable in the amount of \$37,720.10 from Ute-Systems Inc. Half of the note receivable, \$18,860.05, has been classified as a current asset; the remaining \$18,860.05 is long-term. It is anticipated, however, that this note will be liquidated in 1989.

Western Clay Company is wholly owned by two shareholders representing two-thirds of the stock ownership of the Company. There is currently an accounts receivable balance in the amount of \$9,660.54 from Western Clay Company.

NOTE D—PROFIT SHARING PLAN

The Company maintains a profit sharing plan for its employees. Contributions to the plan are based on eleven cents (\$.11) per yard of product sold in the quarters that the Company is profitable. Profit sharing contributions expensed as an employee benefit in these financial statements are \$8,028.82.

NOTE E—MAJOR CUSTOMER

Marley Tile purchases currently comprise approximately 29% of the Company's product sales.



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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www.nr.utah.gov

Michael O. Leavitt
Governor
Robert L. Morgan
Executive Director
Lowell P. Braxton
Division Director

July 19, 2002

CERTIFIED RETURN RECEIPT

7099 3400 0016 8895 5187

Carsten Mortensen
Utelite Corporation
P.O. Box 387
Coalville, Utah 84017

Re: 5-Year Review of Reclamation Surety Estimate & Self Bonding and Indemnity Agreement, Utelite Corporation, Utelite Mine, M/043/004, Summit County, Utah

Dear Mr. Mortensen:

Thank you for providing the requested information regarding the five-year review status of your Utelite Mine, located in Summit County, Utah. The last surety estimate for this mine was \$101,800 in 1994 dollars. Upon review of the information furnished by Utelite Corporation, which stated that there had been no changes at the site the last update, we find we only need to escalate the present bond amount for a five-year period.

The new surety amount for the Utelite Mine, escalated to the year 2007 is \$147,900. An updated Reclamation Cost Estimate is enclosed for your use. This estimate was prepared assuming a "worst case" non-landfill scenario. Our records reflect that we conceptually agreed to accept a post-mine landfill proposal for this site. However, because we have no written documentation from Summit County committing to utilize Utelite's mined-out pits as a county landfill, we will bond for a non-landfill scenario at this time. If, and when, it becomes apparent that Summit County will use Utelite's pit(s) as a county landfill, then the operator can request a modification to the reclamation plan and a proportionate bond reduction from the Division.

As part of our standard 5-yr bond escalation and permit review process, the Division also evaluated the existing (1990) "Self Bonding and Indemnity Agreement". Under condition #7 of this document, the agreement states that:

"Not later than March 30 of each year, the operator shall submit to the Division a corporate financial statement and review opinion substantially similar to the

December 31, 1988, corporate financial statement initially submitted with this agreement and attached hereto as Exhibit B. Failure to maintain or improve the ratio of total liabilities to net worth or the ratio of current assets to current liabilities, as compared to ratios based on Exhibit B, will be grounds for termination of this Agreement. The operator must provide an alternate reclamation surety in the form and amount satisfactory to the Board prior to 30 days before the date set for the termination of this Agreement."

Exhibit B outlines a ratio of total liabilities to net worth of 0.08 and current assets to current liabilities of 9.61. A review of Utelite Corporation's annual financial statements dated December 1994 through December 2001 reveals that Utelite Corporation has failed to maintain or improve these ratios as provided for in the 1990 Board Agreement (copy of the Ratio Review attached). Because Utelite Corporation has consistently failed to maintain or improve the 1988 ratios, it is our position that Utelite Corporation has breeched the "Self Bonding and Indemnity Agreement" entered into with the Division and Board on January 25, 1990.

In accordance with condition #8 of the agreement, the Division believes we are required to *file a formal Notice of Agency with the Board of Oil, Gas & Mining to bring this matter to public hearing*. We anticipate filing a notice so that this matter can be heard at the September 25, 2002, Board hearing. Should you choose to waive this right and agree to post a replacement form of surety with the Division, without a formal public hearing, please notify us accordingly within seven (7) days of your receipt of this letter. In response, we will negotiate a timeframe for filing the replacement surety.

If you have any questions regarding the requirements of this letter, please contact me, or Wayne Hedberg, Minerals Program permit supervisor, at 538-5306 and 538-5286, respectively.

Sincerely,



Mary Ann Wright
Associate Director, Mining

jb
Enclosure Revised Surety Cost Estimate
Self Bonding and Indemnity Agreement
Utelite Financial Ratio Review
cc: Steve Alder, AAG
Doug Jensen, DOGM
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SURETY ESTIMATE UPDATE

Utelite Corporation

4-Apr-00

Utelite Mine

FILE # M/043/004

Summit County

Prepared by Utah Division of Oil, Gas & Mining

Last Update 7/12/02

DESCRIPTION:

-Previous Reclamation Bond estimate was \$101,800 in 1994-\$

-Reclamation Estimate base amount calculated in 1989-\$

-This update adjusts the surety amount for escalation only.

-Escalation factors through 2002 are actual Means Historical Cost Indices

-Total disturbed area = 48.7 ACRES

CALCULATIONS	YR	ESCAL FACTOR	BOND AMOUNT
$F = P(1 + i)^{**n}$			
	1987	0.0195	\$0.00
	1988	0.0181	\$0.00
	1989	0.0177	\$92,450.00
	1990	0.0077	\$93,161.87
	1991	0.0127	\$94,345.02
	1992	0.0221	\$96,430.05
	1993	0.0261	\$98,946.87
	1994	0.0321	\$102,123.06
	1995	0.0193	\$104,094.04
F = Future Sum	1996	0.0242	\$106,613.12
P = Present Sum	1997	0.0236	\$109,129.18
i = Escalation Factor	1998	0.0502	\$114,607.47
n = number of periods	1999	0.0191	\$116,796.47
	2000	0.0244	\$119,646.31
Three Yr Average = 2.82%	2001	0.0460	\$125,150.04
Used to Project 5 Yrs	2002	0.0282	\$128,679.27
From the Year 2002	2003	0.0282	\$132,308.02
	2004	0.0282	\$136,039.11
	2005	0.0282	\$139,875.41
	2006	0.0282	\$143,819.90
	2007	0.0282	\$147,875.62
Updated Surety Amount Rounded (2007-\$)			\$147,900.00

** Average cost per acre = 3036 (\$/ACRE)

Utelite Financial Ratio Review

	<u>12/88</u>	<u>12/94</u>	<u>12/95</u>	<u>12/96</u>	<u>12/97</u>	<u>12/98</u>	<u>12/99</u>	<u>12/00</u>	<u>12/01</u>
CUR ASSETS/CUR LIABILITIES Normal std of 1.2 or greater Board req'd 12/88 maintained	9.61	2.77	2.43	2.16	2.36	3.12	3.02	3.20	3.82
TOTAL LIAB./NET WORTH Normal std of 2.5 or less Board req'd 12/88 maintained	0.08	0.13	0.18	0.65	0.82	0.52	0.39	0.30	1.37
FIXED ASSETS Normal std of \$20 million Board did not require	603,208	1,485,834	1,426,262	2,773,550	2,299,158	2,002,510	1,912,495	1,884,151	1,632,904
TANGIBLE NET WORTH Normal std of \$10 million Board did not require	1,030,746	2,440,981	2,406,078	2,608,347	2,066,071	2,306,260	2,617,496	2,843,417	1,301,853
NET INCOME For information only	66,018	280,836	231,760	330,121	(387,276)	250,532	439,607	538,473	319,078

SLS
04/02/2002